J. MITCHELL COBEAGA, ESQ.
Nevada Bar No. 00177
JOSEPH R. MARIDON, JR., ESQ.
Nevada Bar No. 08561
THE COBEAGA LAW FIRM
228 South 4th Street, 3rd Floor
Las Vegas, Nevada 89101
Telephone: (702) 240-2499
Facsimile: (702) 240-2489

Attorneys for Plaintiff

THE COBEAGA LAW FIRM
ATTORNEYS & COUNSELORS AT LAW
228 South Fourth Street
Las Vegas, Nevada 89101
Tel (702) 240-2499
Fax (702) 868-8473 • (702) 240-2489

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MYKALAI KONTILAI,

Plaintiff,

v.

AJB INVESTMENTS LLC, ALBERT J. BRUNO, and ROBERT J. BRUNO

Defendants,

Case No. 2:09-cv-01374-KJD-GWF

MOTION TO RECONSIDER AND

PROOF OF SERVICE

Plaintiff, MYKALAI KONTILAI, by and through his counsel of record, the Cobeaga Law Firm, does hereby move this honorable Court to reconsider its Order of December 21, 2009 (10) dismissing this matter for failure to serve Defendants in compliance with Rule 4(m) and files proof of service of Defendants Robert J. Bruno and AJB Investments, LLC. This motion is made and based on Federal Rules of Civil Procedure 4(l)(3) and Local Rule 5-1(c).

POINTS AND AUTHORITIES

I.

INTRODUCTION

The Court issued its Order to file proof of service on December 2, 2009 (9). The Court then dismissed this matter, pursuant to its Order on December 21, 2009 (10). However, the Summons

THE COBEAGA LAW FIRM
ATTORNEYS & COUNSELORS AT LAW
228 South Fourth Street
Las Vegas, Nevada 89101
Tel (702) 240-2499
Fax (702) 868-8473 • (702) 240-2489

and Complaint were served on Defendants Robert J. Bruno and AJB Investments, LLC on July 31, 2009. **Exhibit 1**. While the Defendants have not made an appearance in this matter as of yet, the parties have been working toward a resolution which will eliminate the need for further court intervention. If the case remains closed, the Plaintiff will be forced to file and serve a second Complaint which could potentially de-rail the settlement negotiations. On the other hand, if the case is permitted to continue, Plaintiff anticipates that a voluntary dismissal will follow within the next thirty days.

II.

LEGAL AUTHORITY

FRCP 4(l)(3) states that "Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended." Furthermore, LR 5-1(c) states, "Failure to make the proof of service required by this rule does not affect the validity of the service. Unless material prejudice would result, the court may at any time allow the proof of service to be amended or supplied."

In this case, service was accomplished on July 31, 2009. However, Plaintiff's counsel inadvertently failed to file proof of service, and apologizes for doing so, in the time frame ordered by the Court (9). Plaintiff respectfully requests that the Court accept the Proof of Service attached hereto and allow this case to continue.

DATED this 21st day of December, 2009.

THE COBEAGA LAW FIRM

/s/ *Joseph R. Maridon, Jr.*

J. MITCHELL COBEAGA. ESQ.
Nevada Bar No. 00177
JOSEPH R. MARIDON, JR., ESQ.
Nevada Bar No. 08561
228 South Fourth Street
Las Vegas, NV 89101
228 South Fourth Street
Las Vegas, NV 89101

THE COBEAGA LAW FIRM
ATTORNEYS & COUNSELORS AT LAW
228 South Fourth Street
Las Vegas, Nevada 89101
Tel (702) 240-2499
Fax (702) 868-8473 • (702) 240-2489

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing CERTIFICATE AS TO INTERESTED PARTIES was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

DATED this 21st day of December, 2009.

THE COBEAGA LAW FIRM

/s/ *Joseph R. Maridon, Jr.*

J. MITCHELL COBEAGA. ESQ.
Nevada Bar No. 00177
JOSEPH R. MARIDON, JR., ESQ.
Nevada Bar No. 08561
228 South Fourth Street
Las Vegas, NV 89101
228 South Fourth Street
Las Vegas, NV 89101